

TEACHERS' RETIREMENT BOARD

REGULAR MEETING

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SUBJECT: Quarterly Litigation Report

ITEM NUMBER: 11

ATTACHMENT(S): 1

ACTION:

DATE OF MEETING: April 5, 2001

INFORMATION: X

PRESENTER (S): Chris Waddell

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The report is attached.

**Quarterly Litigation Report  
April 2001**

**Changes to the report are in bold type.**

**William J. Tully v. STRS**

San Bernardino Superior Court No. 32185

Plaintiff's Counsel: Pro Per

CalSTRS' Counsel: Susan Oie, DAG

Plaintiff's member wife passed away on July 18, 1996. Prior to her death, she designated Plaintiff as her death benefit and Option 2 beneficiary. As the option beneficiary Plaintiff was entitled to a monthly option allowance upon his wife's death for his life. Before the System began payment however, on or about August 1, 1996, CalSTRS was served with an Internal Revenue Service (IRS) Notice of Levy on Wages, Salary and Other Income against Plaintiff's CalSTRS benefits. The file reflects that several conversations between Mr. Tully and System staff took place regarding payment of the monthly allowance and the levy. During this period of time the System did not make any payments to Mr. Tully or the IRS.

On January 28, 1998, the System received by U.S. mail a copy of a Summons and Verified Complaint filed by Plaintiff seeking general damages in the amount of \$1,000,000,000.00; special damages in the amount of \$5,000,000,000.00; punitive damages in the amount of \$5,000,000,000.00, costs of suit; injunctive and declaratory relief, and such other relief as the court may deem proper. During its review of Plaintiffs file in January of this year, it was discovered for the first time that CalSTRS had inadvertently neglected to distribute any of the benefits payable to either Plaintiff or the IRS. Further in the course of its review, CalSTRS contacted the IRS to determine the status of its August 1, 1996 levy against Plaintiffs benefits. At that time, the System was informed that the IRS had issued a second levy against Plaintiffs benefits in the amount of \$468,374. This levy was served on or about January 28, 1998.

Upon receipt of the second Levy CalSTRS took immediate steps to implement the distribution of Plaintiffs monthly option allowance. Toward that end, and in accordance with the information provided by Plaintiff in the "Statement of Exemptions and Filing Status" received by CalSTRS on or about March 5, 1998 from Plaintiff, CalSTRS calculated the amount of monthly exemption to which Plaintiff was entitled in light of the January 28, 1998 levy to be \$1,058.33. Effective March 1, 1998, CalSTRS began paying Plaintiff that amount as and for distribution of his portion of the monthly option benefit. The balance of Plaintiffs monthly benefit (presently \$710.50) is

being distributed by the System to the IRS in accordance with the January 28, 1998 levy. The monthly benefits will continue to be distributed in this fashion for the remainder of Plaintiffs life or until such time as CalSTRS receives instructions from the IRS - or a court of competent jurisdiction - to the contrary.

The sum of \$40,030.12 remained payable by CalSTRS as and for distribution of benefits for the period July 19, 1996 through February 28, 1998. These include monthly option benefits for the period July 19, 1996 through February 28, 1998 in the amount of \$33,925.58; a statutory lump sum death benefit in the amount of \$5,110.00; and, accrued allowance in the amount of \$994.54. Inasmuch as the benefits remained payable at the time CalSTRS was served with the January 28, 1998 levy, the IRS asserted a right to the entire \$40,030.12, less applicable exemptions, in accordance with the Internal Revenue Code. Accordingly, CalSTRS distributed the sum of \$20,030.12 of the accrued benefits to the IRS. The balance of the accrued benefits - \$20,000.00 in exemptions - has been distributed to Plaintiff. Plaintiff contends that he is entitled to the entire \$40,030.12 in benefits on the grounds that the benefits cannot be distributed in accordance with the August 1, 1996 levy because that levy was released by way of expiration on or about October 17, 1997. (CalSTRS had no notice that the August 1, 1996 levy expired prior to its receipt of correspondence from Plaintiff dated May 27, 1998, to that effect.) Plaintiff further contends that the benefits cannot be distributed in accordance with the January 28, 1998 levy because that levy cannot apply retroactively.

Plaintiff filed a Board of Control claim for the amounts requested in his complaint. The claim was rejected on September 28, 1998 as it raised complex issues of fact and law, which would be better resolved through litigation. CalSTRS filed its Answer to Verified Complaint on November 19, 1998. No date has been set for trial.

### **Norma Cook v. STRS**

San Francisco County Superior Court

Plaintiff's Counsel: Pro Per

CalSTRS Counsel: DAG Geoff Graybill

Plaintiff filed an application for a disability allowance on November 30, 1992. Her application was denied and she requested an administrative hearing. The hearing was held in Oakland, California on May 13 and July 19, 1996 before Administrative Law Judge Lew who rendered a Proposed Decision denying her appeal. This Proposed Decision was adopted by the Benefits and Services Committee of the Teachers' Retirement Board on November 7, 1996. On or about June 10, 1997 Plaintiff filed a Petition for Alternative Writ of Mandate requesting the Superior Court review the denial of her application for a disability allowance. No hearing date has been set.

### **Emogene Doyel v. CalSTRS**

Sacramento County Superior Court

Plaintiff's Counsel: Thomas D. Walker

CalSTRS Counsel: DAG Leslie Lopez

Plaintiff, the spouse of Mark Doyel, a deceased CalSTRS member, requested that the System grant her an Option 2 survivor allowance. This request was based on a Pre-Retirement Election of an Option executed by Mark Doyel naming Plaintiff as the Option beneficiary that was found in one of Mark Doyel's home files after his death. The System denied the request for the reason that the election had to be on file with the System in Sacramento within 30 days of signature by the member. The election form was never sent to CalSTRS. An Administrative Hearing was held in the matter on February 13, 1998 before Administrative Law Judge Richard Lopez. On April 15, 1998 Judge Lopez rendered a Proposed Decision denying the Plaintiff's request. At its meeting on June 4, 1998, the Benefits and Services Committee rejected the Proposed Decision and chose to decide the matter itself on the transcript without taking any additional evidence. The Committee heard the matter on October 8, 1998 and denied Plaintiff's request to be granted an Option 2 allowance. A Petition for Writ of Administrative Mandate was filed on February 26, 1999. The matter was heard on December 6, 1999. The Court denied the Petition in its decision entered January 3, 2000. Mrs. Doyel appealed that decision on March 30, 2000. **All required briefs were filed by late November 2000 and the parties have waived oral argument. No decision has been rendered.**

### **Grantham and Donner v. Board of Administration of CalSTRS**

Superior Court for the County of Los Angeles – Case No. B C231870

Plaintiff's Counsel: Edward Faunce

LeMaire, Faunce, Pingel & Singer; Thomas E. Frankovich

CalSTRS Counsel: Carroll & Scaly (Fiduciary Counsel provided by Chubb, CalSTRS Fiduciary Insurance Carrier)

CalSTRS was served with a class action complaint on June 20, 2000, similar to the *McCarthy* case that was filed in November 1999 and dismissed earlier this year. On behalf of a class of retirants who retired in 1998, the plaintiffs allege CalSTRS breached its fiduciary duty owed to the class of members who retired in 1998 by failing to adequately disclose that important legislation pending in the California Legislature would substantially enhance pension benefits for CalSTRS members who retired on or after January 1, 1999 (AB 1150 and AB1102, the "Teacher Recruitment and Retention Benefits Package"). Plaintiffs further allege CalSTRS breached its duty by not advising the members of the class that there were lawful procedures available by which their 1998 retirement dates could be changed to be effective January 1, 1999. Counsel for CalSTRS filed a demurrer similar to the one that was sustained in the *McCarthy* case. After

hearing on October 26, 2000 the court sustained the demurrer with leave to amend the complaint. Plaintiff filed the First Amended Complaint and CalSTRS filed a demurrer to that amended complaint on December 6, 2000. **Hearing on the second demurrer was to be held on January 18, 2001 in Los Angeles but was moved to February 6, 2001. It was again postponed, however, pending a determination by a team of court personnel to determine if the case is “complex” or not. Once this determination is made the matter will be assigned to the appropriate judge to hear the second demurrer. No determination on complexity has been made at the time of this report.**

**Orange Unified School District (Orange) v. CalSTRS**

Orange County Superior Court Case No. 810861

Plaintiff’s Counsel: Arnold Woo, Hill, Farrer & Burrill LLP  
CalSTRS Counsel: Deputy Attorney General Je

The Office of Administrative Hearings heard this matter on November 10, 1998. On January 26, 1999 Judge Byrnes rendered his Proposed Decision denying the appeal by Orange. The Benefits and Services Committee adopted the Proposed Decision on March 4, 1999. The issue involves creditable compensation. Since 1992 Orange had been paying each of its “Leadership” (management) employees from one of three salary schedules in lieu of a fringe benefit. The System determined upon discovery that the additional compensation was not creditable because all employees in the same class were not paid the same dollar amount, percentage of salary, or the same percentage of the amount being distributed as required by Section 22119.2 and 22119.5 of the Education Code. The Administrative Law Judge agreed with the System’s position. Orange did not agree and filed a Petition for a Writ of Mandate, which was denied on January 14, 2000. Orange filed a timely Notice of Appeal on March 6, 2000. **On January 11, 2001 the Fourth Appellate District Court affirmed the denial of the writ.**

**Van Pelt, Viseur & Agha v. Whittier Union High School District, Los Angeles County Office of Education & CalSTRS**

Los Angeles County Superior Court, Case Number BC227560

Plaintiff’s Counsel: Launder, Chaffee & Schulman  
CalSTRS Counsel: Attorney General

The California State Teachers' Retirement System (CalSTRS/the System) was personally served on May 22, 2000 with a summons and an unverified complaint in the above-referenced action. The three plaintiffs are retirees who had their retirement allowances reduced by CalSTRS effective October 1998 because their former employer (the Whittier Union High School District - WUHSD) had erroneously reported overtime compensation as creditable compensation to the Los Angeles County Office of Education (LACOE), which reported the erroneous information to CalSTRS. As a result, the retirement allowances paid by CalSTRS to the three plaintiff retirees were incorrectly calculated and the retirees overpaid. Plaintiff retiree Ronald Lynn Viseur retired

in 1995; David Van Pelt and Diane Agha both retired in 1997. LACOE contacted CalSTRS on or about June 16, 1997 about the erroneous reporting of overtime compensation as creditable compensation by WUHSD. That prompted CalSTRS to reduce the plaintiff retirees' allowances to the correct level and commence collection of the overpayment by further reducing each plaintiff retirees' corrected allowance via an administrative offset of 5 percent in accordance with California Education Code Section 24617. CalSTRS commenced said reduction and offset on or about October 1998 against plaintiff retirees Van Pelt, Viseur, and Agha. No appeal or request for an administrative hearing was filed by plaintiffs.

A teaching colleague of the three plaintiff retirees' named Thomas Arns also had his retirement allowance reduced by CalSTRS in 1998 for the same reason; however, Mr. Arns pursued an administrative appeal. Said appeal resulted in him successfully having his reduced retirement allowance reinstated to the higher incorrect amount and reimbursed for the amount of the overpaid allowance collected by CalSTRS.

**The System has filed two demurrers but was unsuccessful on both. We have also filed a Motion for Summary Judgment, which will be heard on March 22, 2001. Additionally mediation between the parties took place on March 15, 2001. The outcome of that mediation is not known at this time. I will make an oral report at the meeting on the outcome if the information is available.**

**O'Connor v. CalSTRS, the AG, Yamanaka, Hough, Mosman, LACC, LAUSD, et al.**  
**USDC Case No. CV 00-10604 LGB (BQRx)**

Plaintiff's Counsel: Pro Per

CalSTRS' Counsel: Office of the Attorney General

On November 8, 2000 Mr. O'Connor filed this matter in the United States District Court, Central District and mailed copies of the Complaint to all named defendants. This suit follows two State cases that went from the Administrative hearing level to the California Supreme Court with CalSTRS prevailing in both cases. As the Board will recall, the issue in this matter and all the preceding suits centered on Mr. O'Connor's insistence that CalSTRS take into account both salaries from his two full-time positions to calculate his final compensation for purposes of determining his retirement allowance. There are twenty two causes of action including, among other things, breach of fiduciary duty, unjust enrichment, "tort and violation of vested rights," "lack of due process," equitable estoppel, "conspiracy to defraud and deny a vested interest" and "violation of civil rights and vested rights." At this writing proper service of the Summons and Complaint has not been made. No action will be taken until CalSTRS and the named CalSTRS parties are personally served as required by law. **Plaintiff has still not properly served the parties.**